

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3436 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SALIMKHAN @ SALIM S/O OF MUNIRKHAN PATHAN
Versus
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3436 of 2001
MS JAYSHREE C BHATT for Petitioner No. 1
MR S.S.PATEL, AGP for Respondents No. 1-3
-

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated March 29, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as habitual offender within the meaning of Section 2(bbb) of the Act as one case for commission of the offence under the Prevention of Animals Cruelty Act, 1960 is registered against the petitioner and statements of two anonymous witnesses are recorded in an unregistered offence and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing identity of those witnesses.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, direction or order quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. J.C.Bhatt, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine. To buttress her aforesaid submission she placed reliance on the statements of two anonymous witnesses which are recorded on March 26, 2001 and March 27, 2001 and verified by the detaining authority on March 28, 2001 and immediately on the next date i.e. on March 29, 2001, order of detention came to be passed, therefore, according to her the detaining authority has not exercised the power under Section 9(2) of the Act properly as there was no sufficient time to examine the statements of witnesses. Besides this, she also contended that so far as one case registered against the petitioner/detenu for commission of the offence under Prevention of Animals Cruelty Act, 1960 is concerned, it cannot be called a breach of public order, at the most it can be called breach of the law and order situation and, therefore, also order recorded by the detaining authority suffers from non-application of mind. On the aforesaid premises she urged to allow this petition by quashing the impugned order of detention and setting the

petitioner/detenu at liberty forthwith.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondent has opposed the petition by making oral submissions. He, however, does not dispute the factual aspect with regard to the fact that the order of detention came to be passed on the next day after verifying the statements of two anonymous witnesses. He also does not dispute the fact that one case for commission of the offence under Prevention of Animals Cruelty Act, 1960 registered against the petitioner/detenu demonstrate the breach of the law and order situation only. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose in the case of KALIDAS C KAHAR V. STATE OF GUJARAT 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore, it was held to be a wrong exercise of power under Section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution and, therefore, the detention order was quashed.

8. Applying the principle laid down by this Court in the case of Kalidas's case (supra) it is clear that the present case is identical to the case referred to above. In the present case also statements of two witnesses are recorded on March 26, 2001 and March 27, 2001 and verified by the detaining authority on March 28, 2001 and the order of detention came to be passed on the next day i.e. on March 29, 2001, hence, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

9. There is no manner of doubt that one case registered against the petitioner/detenu for commission of the offence under Prevention of Animals Cruelty Act, 1960 relates to breach of law and order situation only and not public order and, therefore also, the order passed on the ground of breach of the public order suffers from non-application of mind on the part of the detaining authority and on this ground also, order of detention stand vitiated.

10. On overall view of the matter the order of detention stand vitiated on both the aforesaid grounds and the petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated March 29, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)
Jayanti*